

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
FELIPE ZACARIAS-MERCADO,  
  
Defendant.

No. 1:20-cr-00033-DAD-BAM

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR MODIFICATION  
OF SENTENCE UNDER 18 U.S.C.  
§ 3582(c)(1)(A)

(Doc. No. 27)

Pending before the court is defendant Felipe Zacarias-Mercado's second motion for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A). (Doc. No. 27.) The court previously denied defendant Zacarias-Mercado's first motion for compassionate release on November 16, 2020. (Doc. No. 26.) The pending motion, filed on October 18, 2021, is based in part on the purported risks posed to defendant Zacarias-Mercado by the ongoing coronavirus ("COVID-19") pandemic. For the reasons explained below, defendant's motion will be denied.

**BACKGROUND**

On February 13, 2020, defendant Zacarias-Mercado was charged by way of indictment with one count of being a deported alien found in the United States in violation of 8 U.S.C. § 1326(a) and (b)(2). (Doc. No. 1.) On June 8, 2020, defendant Zacarias-Mercado entered a plea of guilty to that charge, and agreed to be sentenced based upon a pre-plea presentence report on

the same day as his change of plea and was immediately sentenced, as contemplated by the parties' plea agreement, to a term of 46 months imprisonment in the custody of the U.S. Bureau of Prisons ("BOP"). (Doc. Nos. 15, 16.) Defendant Zacarias-Mercado is currently incarcerated at Federal Correctional Institution Mendota ("FCI Mendota") in Mendota, California.

As noted above, on October 16, 2020, appointed counsel filed a motion for compassionate release on defendant's behalf pursuant to 18 U.S.C. § 3582(c)(1)(A). (Doc. No. 19.) On November 16, 2020, the court denied that motion on the merits, concluding that defendant Zacarias-Mercado had failed to demonstrate that "extraordinary and compelling" reasons exist justifying his release under 18 U.S.C. § 3582(c)(1)(A) or that his release from imprisonment would be consistent with consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a). (Doc. No. 26.)

Thereafter, on October 18, 2021, defendant filed a *pro se* second motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) and therein once again seeks a reduction of his sentence. (Doc. No. 27.) On November 16, 2021, the government filed its opposition to the pending motion. (Doc. No. 30.) Defendant did not file a reply. However, on January 26, 2022, defendant proceeding *pro se* filed a motion seeking an expedited resolution of his second motion for compassionate release, arguing again that the ongoing coronavirus ("COVID-19") pandemic posed a threat to his well-being and justified his release from confinement. (Doc. No. 36.)

### LEGAL STANDARD

A court generally "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c); *see also* *Dillon v. United States*, 560 U.S. 817, 824 (2010) ("[A] judgment of conviction that includes [a sentence of imprisonment] constitutes a final judgment' and may not be modified by a district court except in limited circumstances."). Those limited circumstances include compassionate release in extraordinary cases. *See United States v. Holden*, 452 F. Supp. 3d 964, 968 (D. Or. 2020). Prior to the enactment of the First Step Act of 2018 ("the FSA"), motions for compassionate release could only be filed by the BOP. 18 U.S.C. § 3582(c)(1)(A) (2002). Under the FSA, however, imprisoned defendants may now bring their

own motions for compassionate release in the district court. 18 U.S.C. § 3582(c)(1)(A) (2018).

In this regard, the FSA specifically provides that a court may

upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf<sup>1</sup> or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable, if it finds that

- (i) extraordinary and compelling reasons warrant such a reduction; or
- (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

18 U.S.C. § 3582(c)(1)(A)(i) and (ii).<sup>2</sup>

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<sup>1</sup> If the BOP denies a defendant's request within 30 days of receipt of such a request, the defendant must appeal that denial to the BOP's "Regional Director within 20 calendar days of the date the Warden signed the response." 28 C.F.R. § 542.15(a). If the regional director denies a defendant's administrative appeal, the defendant must appeal again to the BOP's "General Counsel within 30 calendar days of the date the Regional Director signed." *Id.* "Appeal to the General Counsel is the final administrative appeal." *Id.* When the final administrative appeal is resolved, a defendant has "fully exhausted all administrative rights." *See* 18 U.S.C. § 3582(c)(1)(A).

<sup>2</sup> Under 18 U.S.C. § 3624(c)(2), the BOP may release an incarcerated defendant to home confinement "for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months." The Coronavirus Aid, Relief, and Economic Security Act ("the CARES Act"), Pub. L. 116-136, expands the BOP's authority to release incarcerated defendants without judicial intervention. The CARES Act allows the BOP to "lengthen the maximum amount of time" for which a prisoner may be placed in home confinement under § 3624(c)(2) "as the Director determines appropriate," assuming "the Attorney General finds that emergency conditions will materially affect the functioning" of the BOP. CARES Act, Pub. L. 116-136, Div. B, Title II, § 12003(b)(2) (2020). However, the BOP's authority in this regard is limited to "the covered emergency period." *Id.* The BOP's authority expires "30 days after the date on which the national emergency declaration terminates." *Id.* § 12003(a)(2). After the CARES Act was

1 The applicable policy statement with respect to compassionate release in the U.S.  
 2 Sentencing Guidelines sets out criteria and circumstances describing “extraordinary and  
 3 compelling reasons.” U.S. Sent’g Guidelines Manual (“U.S.S.G.”) § 1B1.13 (U.S. Sent’g  
 4 Comm’n 2018)<sup>3</sup>; *see also United States v. Gonzalez*, 451 F. Supp. 3d 1194, 1197 (E.D. Wash.  
 5 2020) (noting that many courts have relied on U.S.S.G. § 1B1.13 to define “extraordinary and  
 6 compelling reasons,” even though that policy statement was issued before Congress passed the  
 7 FSA and authorized defendants to file compassionate release motions). However, the Ninth  
 8 Circuit has now held “that the current version of U.S.S.G. § 1B1.13 is not an ‘applicable policy  
 9 statement[ ]’ for 18 U.S.C. § 3582(c)(1)(A) motions filed by a defendant.” *United States v.*  
 10 *Aruda*, 993 F.3d 797, 802 (9th Cir. 2021). “In other words, the Sentencing Commission has not  
 11 yet issued a policy statement ‘applicable’ to § 3582(c)(1)(A) motions filed by a defendant.” *Id.*  
 12 The Ninth Circuit has concluded that “[t]he Sentencing Commission’s statements in U.S.S.G. §  
 13 1B1.13 may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant,  
 14 but they are not binding.” *Id.* (citing *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir.  
 15 2020)).

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17 enacted, the Attorney General issued a memo instructing the BOP to “immediately review all  
 18 inmates who have COVID-19 risk factors” beginning with those who are housed at facilities  
 19 where “COVID-19 is materially affecting operations.” Office of Att’y Gen., *Increasing Use of*  
 20 *Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020). The BOP has  
 21 acted on the Attorney General’s guidance, including one case in which a sentenced prisoner was  
 22 released to home confinement after serving less than half his sentence from a facility that reported  
 23 no positive COVID-19 cases at the time of his release. *See Hannah Albarazi, Paul Manafort*  
 24 *Seeks Prison Release Over COVID-19 Fears*, Law360 (Apr. 14, 2020), <https://www.law360.com/articles/1263706/paul-manafort-seeks-prison-release-over-covid-19-fears> (noting that the  
 prisoner’s counsel had argued that the CARES Act “broadens the authority” of the BOP to release  
 prisoners to home confinement); Khorri Atkinson, *Paul Manafort Released From Prison Amid*  
*COVID-19 Fears*, Law360 (May 13, 2020), [https://www.law360.com/articles/1273090/paul-](https://www.law360.com/articles/1273090/paul-manafort-released-from-prison-amid-covid-19-fears)  
[manafort-released-from-prison-amid-covid-19-fears](https://www.law360.com/articles/1273090/paul-manafort-released-from-prison-amid-covid-19-fears).

25 <sup>3</sup> According to U.S.S.G. § 1B1.13(2), to be granted a reduction of sentence under 18 U.S.C.  
 26 § 3582(c)(1)(A), the defendant must not pose “a danger to the safety of any other person or to the  
 27 community, as provided in 18 U.S.C. § 3142(g).” U.S.S.G. § 1B1.13(2). However, as the Ninth  
 28 Circuit has now clarified, “[t]his dangerousness finding is not statutorily required under 18 U.S.C.  
 § 3582(c)(1)(A)(i), but [it] is part of the Sentencing Commission’s policy statement in U.S.S.G.  
 § 1B1.13(2).” *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021).

1 In so holding, the Ninth Circuit joined the five other circuits who have addressed this  
2 issue and have unanimously held “that U.S.S.G. § 1B1.13 only applies to § 3582(c)(1)(A)  
3 motions filed by the BOP Director, and does not apply to § 3582(c)(1)(A) motions filed by a  
4 defendant.” *Id.*; *see, e.g., United States v. Brooker (Zullo)*, 976 F.3d 228, 237 (2d Cir. 2020)  
5 (“[T]he First Step Act freed district courts to consider the full slate of extraordinary and  
6 compelling reasons that an imprisoned person might bring before them in motions for  
7 compassionate release. Neither Application Note 1(D), nor anything else in the now-outdated  
8 version of Guideline § 1B1.13, limits the district court’s discretion.”); *United States v. Jones*, 980  
9 F.3d 1098, 1111 (6th Cir. 2020) (“In cases where incarcerated persons file motions for  
10 compassionate release, federal judges may skip step two of the § 3582(c)(1)(A) inquiry and have  
11 full discretion to define ‘extraordinary and compelling’ without consulting the policy statement  
12 § 1B1.13.”); *Gunn*, 980 F.3d at 1181 (“[T]he Guidelines Manual lacks an ‘applicable’ policy  
13 statement covering prisoner-initiated applications for compassionate release. District judges must  
14 operate under the statutory criteria—‘extraordinary and compelling reasons’—subject to  
15 deferential appellate review.”); *United States v. McCoy*, 981 F.3d 271, 284 (4th Cir. 2020) (“In  
16 short, we agree with the Second Circuit and the emerging consensus in the district courts: There  
17 is as of now no ‘applicable’ policy statement governing compassionate-release motions filed by  
18 defendants under the recently amended § 3582(c)(1)(A), and as a result, district courts are  
19 ‘empowered . . . to consider any extraordinary and compelling reason for release that a defendant  
20 might raise.’”) (citation omitted); *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021)  
21 (“We therefore agree with the district court that under the second part of § 3582(c)(1)(A)’s test,  
22 its finding that extraordinary and compelling reasons warranted a reduction in Maumau’s case  
23 was not constrained by the Sentencing Commission’s existing policy statement, U.S.S.G.  
24 § 1B1.13.”).

25 In the past, when moving for relief under 18 U.S.C. § 3582(c), it was recognized that the  
26 defendant bore the initial burden of demonstrating that a sentence reduction was warranted. *See*  
27 *United States v. Sprague*, 135 F.3d 1301, 1306–07 (9th Cir. 1998). Although the Ninth Circuit  
28 has not specifically addressed the question of which party bears the burden in the context of a

1 motion for compassionate release brought pursuant to § 3582(c) as amended by the FSA, district  
 2 courts to have done so agree that the burden remains with the defendant. *See, e.g., United States*  
 3 *v. Greenhut*, No. 2:18-cr-00048-CAS, 2020 WL 509385, \*1 (C.D. Cal. Jan. 31, 2020); *United*  
 4 *States v. Van Sickle*, No. 18-cr-0250-JLR, 2020 WL 2219496, \*3 (W.D. Wash. May 7, 2020).

### 5 ANALYSIS

6 As district courts have summarized, in analyzing whether a defendant is entitled to  
 7 compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), the court must determine whether a  
 8 defendant has satisfied three requirements:

9 First, as a threshold matter, the statute requires defendants to exhaust  
 10 administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Second, a  
 11 district court may grant compassionate release only if “extraordinary  
 12 and compelling reasons warrant such a reduction” and “that such  
 13 reduction is consistent with applicable policy statements issued by  
 the Sentencing Commission. *Id.* Third, the district court must also  
 consider “the factors set forth in Section 3553(a) to the extent that  
 they are applicable.” *Id.*

14 *United States v. Rodriguez*, 424 F. Supp. 3d 674, 680 (N.D. Cal. 2019); *see also United States v.*  
 15 *Ramirez-Suarez*, No. 16-cr-00124-LHK-4, 2020 WL 3869181, at \*2 (N.D. Cal. July 9, 2020);  
 16 *United States v. Parker*, 461 F. Supp. 3d 966, 970 (C.D. Cal. 2020); *United States v. Trent*, No.  
 17 16-cr-00178-CRB-1, 2020 WL 1812242, at \*2 (N.D. Cal. Apr. 9, 2020) (noting that as to the third  
 18 factor, under 18 U.S.C. § 3582(c)(1)(A) release must be “consistent with” the sentencing factors  
 19 set forth in § 3553(a)).

#### 20 A. Administrative Exhaustion

21 Defendant asserts, and the government does not dispute, that he has exhausted his  
 22 administrative remedies prior to filing his pending § 3582 motion. (Doc. Nos. 27 at 2; 30 at 3.)  
 23 Because failure to exhaust is normally viewed as an affirmative defense, the court will accept the  
 24 government’s concession and turn to address the merits of defendant’s motion.

#### 25 B. Extraordinary and Compelling Reasons

26 According to the Sentencing Commission’s policy statement, “extraordinary and  
 27 compelling reasons” warranting compassionate release may exist based on a defendant’s medical  
 28 conditions, age and other related factors, family circumstances, or “other reasons.” U.S.S.G.

§ 1B1.13, cmt. n.1 (A)–(D). As addressed above, even though the catch-all of “other reasons” was included in the policy statement at a time when only the BOP could bring a compassionate release motion, courts have agreed that it may be relied upon by defendants bringing their own motions for reductions in their sentence under the FSA. *See, e.g., United States v. Kesoyan*, No. 2:15-cr-00236-JAM, 2020 WL 2039028, at \*3–4 (E.D. Cal. Apr. 28, 2020) (collecting cases.) Moreover, in light of the Ninth Circuit’s decision in *Aruda*, while U.S.S.G. § 1B1.13 may inform its determination, this court is not restricted thereby and instead has “full discretion to define ‘extraordinary and compelling’ without consulting the policy statement § 1B1.13.” *Jones*, 980 F.3d at 1111.

The medical condition of a defendant may warrant the granting of compassionate release by the court where the defendant “is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory),” though “[a] specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required.” U.S.S.G. § 1B1.13, cmt. n.1(A)(i). Non-exhaustive examples of terminal illnesses that may warrant a compassionate release “include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.” *Id.* In addition to terminal illnesses, a defendant’s debilitating physical or mental condition may warrant compassionate release, including when:

The defendant is

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

*Id.* at cmt. n.1(A)(ii). Where a defendant has moderate medical issues that otherwise might not be sufficient to warrant compassionate release under ordinary circumstances, many courts have concluded that the risks posed by COVID-19 may tip the scale in favor of release when the particular circumstances of a case are considered in their totality. *See, e.g., Parker*, 461 F. Supp. 3d at 980 (“Since the onset of the COVID-19 pandemic, courts have determined that inmates



1 suffering from conditions such as hypertension and diabetes are now at an even greater risk of  
2 deteriorating health, presenting ‘extraordinary and compelling’ circumstances that may justify  
3 compassionate release.”) (collecting cases); *United States v. Rodriguez*, 451 F. Supp. 3d 392, 405  
4 (E.D. Pa. 2020) (“Without the COVID-19 pandemic—an undeniably extraordinary event—Mr.  
5 Rodriguez’s health problems, proximity to his release date, and rehabilitation would not present  
6 extraordinary and compelling reasons to reduce his sentence. But taken together, they warrant  
7 reducing his sentence.”).

8 Compassionate release may also be warranted based on a defendant’s age and other  
9 related factors. Thus, “extraordinary and compelling reasons” exist where a “defendant (i) is at  
10 least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because  
11 of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of  
12 imprisonment, whichever is less.” U.S.S.G. § 1B1.13, cmt. n.1(B).<sup>4</sup>

13 As in his first motion for compassionate release which the court denied, defendant  
14 Zacarias-Mercado again asserts that based on his health issues and his prior contraction of the  
15 COVID-19 virus at the Fresno County Jail while his case was pending before this court, he is  
16 particularly at risk of suffering severe illness from the COVID-19 virus at this time. (Doc. No. 27  
17 at 1.) Defendant previously tested positive for COVID-19 on June 24, 2020. (*Id.*) Defendant  
18 contends that as a result of his prior infection, his health is rapidly deteriorating and that he is  
19 suffering from diabetes, asthma, breathing problems, high cholesterol, hypertension, severe  
20 muscle weakness, and body pain. (*Id.*) Defendant concludes that his current conditions place  
21 him at a high risk of suffering a severe illness were he to contract COVID-19 again. (*Id.*) In  
22 further support of his pending motion, defendant recites in summary fashion the current danger  
23 posed by and the spread of the COVID-19 virus throughout correctional facilities generally. (*Id.*)  
24 With specific respect to FCI Mendota, defendant argues that the prison is understaffed with  
25 respect to medical services. (*Id.* at 2.)

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27 <sup>4</sup> Here, however, because defendant Zacarias-Mercado is only 45 years old (Doc No. 23 at 2—  
28 sealed), his age and age-related factors do not play a role in consideration of his pending motion.



1 In its opposition to the pending motion, the government asserts that defendant's medical  
 2 records reflect only "that he has general asthma, that is not moderate or severe, and diabetes, and  
 3 that he is being successfully treated for these health problems through an inhaler and  
 4 medications." (Doc. No. 30 at 5.) Moreover, the government points out that defendant's medical  
 5 records show that he has now been fully vaccinated against the COVID-19 virus. (*Id.*) (citing  
 6 Doc. No. 35 at 52 — sealed). The government concedes that defendant Zacarias-Mercado has  
 7 tested positive for, and recovered from, COVID-19, but argues that his previous infection,  
 8 adequate treatment, and vaccination status all contribute to diminish any future risk of severe  
 9 illness posed by the virus to defendant. (*Id.* at 6.)

10 As stated in its previous order, the undersigned does not discount the possibility of  
 11 defendant's reinfection from the virus. Erring on the side of caution, the undersigned finds  
 12 defendant's fear of reinfection, and the potential consequences to him were that to occur, to be  
 13 potentially well-placed. Nevertheless, the risk of severe illness has now been even further  
 14 reduced by defendant's recent vaccination against COVID-19. As to defendant's vaccination  
 15 status, he received his dose of the Johnson & Johnson vaccine on June 10, 2021. (Doc. No. 35 at  
 16 53—sealed.) Because more than two weeks have passed since receiving that dose, defendant is  
 17 now fully vaccinated against the virus. *See COVID-19: When You've Been Fully Vaccinated*,  
 18 Centers for Disease Control and Prevention, [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html)  
 19 [ncov/vaccines/fully-vaccinated.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html) (last updated Jan. 16, 2022). The court recognizes that the  
 20 CDC also recommends that everyone over the age of 18 who received the Johnson & Johnson  
 21 vaccine should get a booster dose of either the Pfizer-BioNTech or Moderna vaccine at least 2  
 22 months after their initial dose.<sup>5</sup> *See id.* Nonetheless, the vaccine that defendant has received no  
 23 doubt offers at least some protection from severe illness.

24 Furthermore, the medical staff at FCI Mendota appears to be adequately treating  
 25 defendant for his diabetes and asthma, as reflected in defendant's medical records. (Doc. No. 35  
 26 at 51—sealed.) Indeed, defendant has made no showing that he is being denied necessary

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27 <sup>5</sup> It is the court's hope that Bureau of Prisons medical staff has or will make a booster dose of  
 28 either the Pfizer-BioNTech or Moderna vaccine available to defendant.

1 medical treatment or prescriptions or that necessary medical treatment of his diabetes or asthma is  
 2 being delayed in any way. *See, e.g., United States v. Gorai*, No. 2:18-cr-00220-JCM, 2020 WL  
 3 1975372, at \*3 (D. Nev. Apr. 24, 2020) (finding that defendant “has been unable to self-care in a  
 4 BOP facility already overburdened by its COVID-19 response” where the defendant could not  
 5 receive breathing treatments to clear his lungs as required to treat his asthma, despite repeated  
 6 requests for them); *United States v. Adeyemi*, 470 F. Supp. 3d 489, 516 (E.D. Pa. July 6, 2020)  
 7 (finding no extraordinary and compelling reason even though a potential lag in medication  
 8 prescription refills might impact the defendant’s ability to self-manage his medical conditions).

9 The court finds that the evidence before it at this time establishes that medical staff at FCI  
 10 Mendota are able to adequately monitor and care for defendant Zacarias-Mercado. *See United*  
 11 *States v. McCollough*, No. 15-cr-00336-001-PHX-DLR, 2020 WL 2812841, at \*2 (D. Ariz. May  
 12 29, 2020) (“Since Defendant has contracted COVID-19, the relevant questions concern (1) the  
 13 course of his illness, (2) the state of his health, (3) his prognosis, and (4) the adequacy of the care  
 14 and treatment being provided to him in BOP given his pre-existing conditions. . . . There is no  
 15 evidence that the circumstances surrounding Defendant’s health or treatment are extraordinary or  
 16 compelling.”); *see also United States v. Ayon-Nunez*, No. 1:16-cr-00130-DAD, 2020 WL 704785,  
 17 at \*3 (E.D. Cal. Feb. 12, 2020) (“Chronic conditions that can be managed in prison are not a  
 18 sufficient basis for compassionate release.”) (internal quotation marks and citation omitted). The  
 19 court also concludes that defendant has failed to demonstrate the existence of extraordinary and  
 20 compelling reasons calling for his compassionate release from confinement in light of the critical  
 21 fact that he is now vaccinated and in light of the fact that defendant has not shown that FCI  
 22 Mendota is unable to monitor his medical conditions and provide adequate medical care for him.

23 Accordingly, the court concludes that defendant has not met his burden of demonstrating  
 24 extraordinary and compelling reasons for this compassionate release under § 3582(c)(1)(A).  
 25 Therefore, his second motion for compassionate release will also be denied.

### 26 **C. Consistency With the § 3553(a) Factors**

27 Finally, even if defendant Zacarias-Mercado’s motion were supported by a showing of  
 28 extraordinary and compelling reasons for his compassionate release, the undersigned is not

1 persuaded that the requested reduction in sentence would be consistent with consideration of the  
2 sentencing factors set forth at 18 U.S.C. § 3553(a).<sup>6</sup> See *Parker*, 2020 WL 2572525, at \*11.

3 In the pending motion, defendant argues that consideration of the § 3553 factors supports  
4 his request for compassionate release because he asserts that he “has rehabilitated himself and  
5 learned his lessons, and realized the consequences of his unlawful actions.” (Doc. No. 27 at 1.)  
6 Defendant further notes that he has been reading religious texts and that he regrets the harm his  
7 actions may have caused others. (*Id.*) Lastly, defendant lists his plan to work as a fruit-picker or  
8 in construction, noting that he would be able to secure such employment easily and that his sister  
9 would assist him as well. (*Id.* at 2.)

10 The government counters that defendant’s considerable criminal history and already  
11 lenient sentence caution against granting his compassionate release. (Doc. No. 30 at 6–7.)  
12 Specifically, the government points to defendant’s convictions in state court in February 2020 for  
13 manufacturing a controlled substance, child abuse, and being a felon-in-possession of a firearm.  
14 (*Id.* at 2.) The government also notes that defendant Zacarias–Mercado received only a 46-month  
15 sentence of imprisonment in this case, even though the U.S. Probation Office’s pre-plea report  
16 recommended that a 78-month prison sentence be imposed. (*Id.*)

17 The court previously rejected defendant’s arguments with regard to consideration of these  
18 sentencing factors in its order denying plaintiff’s first motion for compassionate release. (Doc.  
19 No. 26.) Because defendant does not raise any new arguments in this regard, the court will not  
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22 <sup>6</sup> Title 18 U.S.C. § 3553(a) provides that, in determining the sentence to be imposed, the court  
23 shall consider: the nature and circumstances of the offense and the history and characteristics of  
24 the defendant; the need for the sentence imposed to reflect the seriousness of the offense, promote  
25 respect for the law, provide just punishment for the offense, afford adequate deterrence, protect  
26 the public from further crimes of the defendant and provide the defendant with needed  
27 educational or vocational training, medical care, or other correctional treatment in the most  
28 effective manner; the kinds of sentences available; the kinds of sentence and the sentencing range  
established for the applicable category of offense committed by the applicable category of  
defendant as set forth in the guidelines; any pertinent policy statement issued by the Sentencing  
Commission; the need to avoid unwarranted sentence disparities among defendants with similar  
records who have been found guilty of similar conduct; and the need to provide restitution to any  
victims of the offense.

1 repeat its analysis here and again finds that a reduction of defendant's sentence would not be  
2 consistent with consideration of the sentencing factors set forth in 18 U.S.C. § 3553(a).

3 **CONCLUSION**

4 Because defendant Zacarias-Mercado has failed to demonstrate that "extraordinary and  
5 compelling" reasons exist justifying his release under 18 U.S.C. § 3582(c)(1)(A) or that his  
6 release from imprisonment at this time would be consistent with consideration of the sentencing  
7 factors set forth in 18 U.S.C. § 3553(a), his second motion for compassionate release (Doc. No.  
8 27) brought *pro se* on his own behalf is denied.

9 IT IS SO ORDERED.

10 Dated: **February 6, 2022**

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13 UNITED STATES DISTRICT JUDGE  
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